

## **“Flip Chart Notes” – Nutrient Trading RAP Meeting II**

Institute for Environmental Negotiation, University of Virginia

### **Information Requests, Questions, and Recommendations Identified by the RAP**

#### **Information Requests:**

- Lists of mitigation banks (request this be put on the website)
- Statutory and DCR language for Local Water Quality to inform discussion

#### **Parking Lot – Issues that Require Extended Discussion:**

- 5% credit for conservation easements (issue of parity, treatment of nonprofits, etc)
- Credit release for any activity (e.g. succession vs. planting)
- Terminology – when/whether to use “bank” in lieu of “practice”
- Modeling
- Using 2005 as the baseline year, and whether the statute gives the Board authority to change
- Temporary (Term) vs. Permanent (Perpetual) credits and whether separate processes are needed
- Local Water Quality
  - Where to place this in the outline? As criteria for applications, throughout, or as separate section?
  - What exactly is meant by this? Idea of asking each RAP member to explain
  - Suggestion that forthcoming EPA memorandum may inform the discussion

#### **Mitigation Banking (MBI) Presentation Discussion:**

- How do you define invasives?
- What is the minimum width for a buffer? Answer: 100 feet, generally
- Define “voluntary” native stems (vs. planted)
- Issue raised that the reporting timeframe may be more manageable if it is staggered throughout the year, although ecological calendars are in play as well as administrative calendars
- Is long term monitoring required for properties with deed restriction as well as easements?  
Answer: yes
- Is an in-lieu fee limited in area?
- Request for examples of why a service area would be smaller than an 8 digit HUC? What criteria would be used?
- Who typically holds an easement?
- Explain extra credit

- The local sponsor issue is something the RAP may wish to consider
- How often are Templates updated?
- Issue or equality vs. preferential treatment in issuing credits (e.g. 5% credit in relation to conservation easements); it was pointed out that this exists because there is a third party involved in easements
- Conversion & coordination – “either / or”
- Request for names of particular case studies cited in presentation
- Question about the public notice process? It was indicated that the general public generally do not submit comments, which may be because they are unaware of the invitation (i.e. not posted in newspaper)
- Aggregated model
- Crop to fallow vs. crop to forest
- Where is the “Look Up Table” that is being referenced? Clarification that this is not tied to the Bay Model
- Additional issues DEQ suggests the RAP may wish to consider :
  - Eminent Domain
  - Clear Title is important
  - Localities
  - 3<sup>rd</sup> Party Re-Sale and Tracking of this (or reassignment through bulk purchase)
- Question about staffing of mitigation program and programmatic costs
- There should be a fee structure to support staffing and to show the qualification of sponsors, although it was acknowledged that general funds would likely be necessary as well
- Need for flexibility over time
- Question to explain the evolution of Umbrella Banking Criteria

#### **Nutrient Credit Certification Process Presentation Discussion:**

- Terminology issues around using “bank” instead of describing practices
- Need to talk about how dispute resolution would relate to the public
- Timeframe for release of credits, particularly as it relates to the fallow phase
  - Should there be separate applications for crop to fallow and fallow to forest? Or separate releases?
- When will public notice come? DCR responded that they are happy to accept comments/suggestions on this
- Under Application Requirements item C, there needs to be clarification on which digit HUC? 8 or 12?
- At what point would an on-site visit be conducted? At the time of release or prior to approving?
- Issue of different processes needed for temporary vs. permanent credits; a temporary credit should entail a faster process, although another member suggested that more regulation may be needed for a term credit

- When are fees due?
- How to maintain the program and appropriate level of effort as it scales up?
- How and when is the ledger updated?
- Recommendation for regular (e.g. monthly) review team meetings with public notice
- Describe BMP standards (i.e. will you use NRCS?)
- Describe the Life Cycle of a Credit in terms of three phases that are also reported in the Registry:
  - Verification / Monitoring
  - Trade
  - Retirement
- Degree of assurance needed may vary by practice. Be careful of compounding assurances. We don't want to hedge against failure so much that we destroy the financial viability of the program.
- Need to "close the loop" on assurances

#### **Regulation Outline Presentation Discussion:**

- Is "Exemptions" on page 2 related to Fees?
- Where would "Verification" fall? It should be included up front as well as later in the process
- Include "Certainty" in 50-80-70
- Is "Financial Assurance" in the right place? At what point will the trigger occur?
- Suggestion to move Local Water Quality to Part III as criteria for service area, or move it up into a couple of different areas in the outline
- Articulate / define "Service Area" (pointed out that it is in the Law)
- Include "Wetland Mitigation Banks"
- Include "Ineligible Activities"
- Comment that we should only be considering Local Water Quality as it relates to the specific Charge of the RAP
- Include a separate area on Transfer and Sale of Credits
- Wetland and Stream Mitigation conversion to Nutrient should be separate
- Include a section for Public Notice
- Include section differentiating Term and Permanent Credits
- Include "Re-Sale of Credits" in Part III

#### **Definitions Presentation Discussion:**

- What is the difference between "Bundler" and "Aggregate"? Select one to use
- Clarify digit vs. order for "HUC"
- "Delivered Load" – may in effect prohibit practices like shellfish aquaculture because of the language related to "from an upstream point...")

- “Baseline” – need to more clearly articulate what’s needed to meet allocation
- When there is more than one definition, are we choosing among them or creating a new definition? Should the default be what’s in the Law?
- Related to the above, a member spoke to the importance of consistency with other programs to avoid duplication over time
- “Additionality” – some felt that this term would not be relevant; one member argued the definition is also not useful; another member spoke of the value of including the concept for now as a way to hold this RAP to a high standard
- “Nutrient Bank” – in a wetland area the bank is the physical location, not the entity
- “BMP” – suggestion from a few RAP members to use the definition from the Act
  - Suggestion to add definitions of “structural practices,” “nonstructural practice,” and “other management practices” to clarify the definition of BMP
  - There should be consistency in Virginia code – why four definitions!?
  - Suggestion that it may be presented as in a dictionary entry, with multiple valid definitions included as part of the overall definition
  - Aim for consistency
  - Is a maintenance procedure a management practice? Need to “add meat to the bone” but not change the definition
- “Bank Sponsor” – the clause “and in most circumstances” creates too much uncertainty and needs to include more defined language
- Add the term “Local Water Quality”, which the RAP needs to define
- Add “Contravention”
- At the end of this process, we will take out terms that are not used in the regulation

#### **Comments on the Revised Work Plan:**

- Request that materials for the February 22 meeting be sent out well in advance
- DCR staff asked for comments by end of January
- DCR staff suggested two items for February agenda:
  - Cranston Mill Bank
  - Discussion of Procedures (draft regulation)
- RAP member asked if comments on methodologies (e.g. VAST, CAST) are welcome, and DCR confirmed this has not been determined and suggestions would be welcome

#### **Comment from the Public:**

- Re: Term Credits – This issue does raise concerns and may be challenging to regulate, but it is a good opportunity to create an innovative marketplace. Please keep balance in mind as we

develop a robust and energetic marketplace that accommodates the creativity needed to meet local environmental quality goals

**Additions to the Running Log of Acronyms & Technical Terms:**

- MBI
- CRP
- IRT
- VAST / CAST